

This case has already spawned two separate appeals to this Court. In appeal number 15-1506 appellants appeal from the district court's March 27, 2015 judgment dismissing all their claims. Contending that pursuant to that district court judgment it was a prevailing party under the Copyright Act, on October 20 and 23, 2015, in the district court Xcentric filed its renewed motion for an award of

attorney's fees and a motion for an order requiring appellants to post a \$30,000 appeal bond in order to perfect their appeal of the merits judgment. While those motions were pending in the district court, in their appeal of the merits judgment appellants timely filed their brief and appendix in this Court.

On December 31, 2015, the district court entered orders granting Xcentric's renewed motion for attorney's fees and its motion to require appellants to post a bond (ECF #158, 159). On January 14, 2016, appellants filed a notice of appeal of the two December 31st orders (ECF # 161). That same day in appeal number 15-1506 (the merits judgment) this Court entered an Order deferring Xcentric's briefing until "after the district court resolves the pending January 13, 2016 motion¹ with respect to attorneys fees and after the time for appealing from the attorney's fees and bond orders has run."

On March 28, 2016, this Court docketed appellants' appeal from the district court's December 31, 2015 attorney's fees and bond orders as appeal number 16-1085. Acknowledging the pendency in the district court of cross motions to amend and vacate those orders, in its March 28, 2016 Order this Court ruled: "Pursuant to Fed. R. App. P. 4 (a)(4)(A), the notice of appeal does not become effective until the district court disposes of the post-judgment motions."

¹ On January 28, 2016, in the district court the plaintiffs filed what essentially was a cross motion under Fed. R. Civ. P. 59(e) and 52 (b) to vacate the district court's two December 31st orders. (ECF # 169, #170).

On May 2, 2016, the district court entered orders disposing of all the then pending post-judgment motions; and, that same day the district court appeals clerk filed supplemental certificates of the record on appeal in both the merits appeal, number 15-1506 and in this appeal, number 16-1085. On May 3, 2016 in appeal number 16-1085, stating that “the record on appeal [was] now ... complete,” this Court set a briefing schedule requiring appellants to file their brief on their appeal of the attorney’s fees and bond orders by June 13, 2016.²

On May 16, 2016, in the district court Xcentric filed a motion “[p]ursuant to Fed. R. Civ. P. 54(d) and 17 U.S.C. §505” for a supplemental award of attorney’s fees (ECF # 182) and also defendant’s motion for writ of attachment (ECF # 183).³

This Court’s scheduling Order in the appeal of the attorney’s fees and bond orders, appeal number 16-1085, is implicitly predicated on the appellate court having a complete record of the district court’s disposition of all the post judgment motions addressing Xcentric’s entitlement to an award of attorney’s fees and the posting of a bond.

² That same day in the merits appeal, number 15-1506, the Court set a deadline for Xcentric’s appellee brief as June 2, 2016. In the merits appeal number 15-1506 on April 28, 2016, having conducted a preliminary review suggesting “a sufficient basis to conclude that the appeal can proceed on the issues raised in the appellants’ brief concerning the district court’s March 24, 2014 decision” without prejudice the Court denied Xcentric’s motion to limit the scope of appeal of the merits judgment.

³ Copies of ECF # 182 (without the exhibited affidavits of counsel) and #183 are attached as Exhibit A and B.

Staying appeal number 16-1085 pending the district court’s disposition of all post judgment motions concerning Xcentric’s entitlement to an award of attorney’s fees will avoid wasting judicial resources. A “request for attorney’s fees should not result in a second [and/or third] major litigation.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

WHEREFORE, appellants request the Court to enter an Order staying appeal number 16-1085 and to issue a new briefing notice and orders upon disposition by the district court of the May 16, 2016 Motion of the defendant Xcentric Ventures LLC for a supplemental award of attorney's fees.

Respectfully submitted,

SMALL JUSTICE LLC, RICHARD A.
GOREN, and CHRISTIAN DUPONT,
Appellants,

by their attorney,

May 19, 2016

/s/ *Richard A. Goren*

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on May 19, 2016.

/s/ Richard A. Goren